



HAND-DELIVERED

March 24, 2008

The Honorable Jim McDermott
Chairman
Subcommittee on Income Security and Family Support
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20510-6275

Dear Mr. Chairman:

Thank you for the opportunity to testify before the Subcommittee on Income Maintenance and Family Support on February 27, 2008 on behalf of the Casey-CSSP Alliance for Racial Equity in Child Welfare (Alliance).¹ Following the testimony, Members of the Subcommittee submitted follow-up questions, and this letter is intended to address those questions and provide additional information.

Questions from Subcommittee Chairman Jim McDermott:

1. A recent Government Accountability Office (GAO) report on African American Children in Foster Care found that there are larger problems in the child welfare systems that exacerbate the disproportionate number of African American children in the system, such as high levels of poverty, limited access to prevention services, and challenges in recruiting adoptive parents for these children. Would you agree with their assessment?

Yes, we agree with this assessment. Research now demonstrates that many families, regardless of their racial background, come to the attention of the child protection system due to poverty, mental health problems, substance abuse, domestic violence, and chronic family stress. Economic hardship is one of the key factors thought to be associated with reports of child maltreatment, and

¹ The Alliance is a partnership of several leading foundations, agencies and associations that focus on improving our nation's child welfare systems. This partnership was established to develop and implement a national, multiyear campaign to address racial disparities and reduce the disproportionate representation of children of color in the nation's child welfare system. The Alliance partners are Casey Family Programs; the Annie E. Casey Foundation and its direct service agency, Casey Family Services; the Jim Casey Youth Opportunities Initiative; the Marguerite Casey Foundation; parents and alumni of foster care; and the Center for the Study of Social Policy (CSSP). The Race Matters Consortium and Black Administrators in Child Welfare are also partners in this work.

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with child neglect in particular.² Children who are reported as neglected make up two-thirds of the cases screened in after a protective services investigation, even though many of these cases may be considered low risk and could benefit from community supports. Most child welfare agencies lack an intervention specific to these families and apply the same approach that is used for the most serious abuse or neglect cases. In response to this problem, many agencies are now undertaking steps to develop differential approaches to address the needs of low-risk families. These alternative responses are based upon demonstrated effectiveness by states that have fully implemented them and include community services and supports. A five-year evaluation of Missouri's differential response program found that:

- The percentage of reported incidents in which some action was taken increased.
- Child safety was not compromised.
- In cases where child safety was threatened, children were made safer sooner.
- Recurrence of child abuse and neglect reports decreased.
- There was greater utilization of community resources.
- Cooperation of families towards solving problems improved.
- Families were more satisfied and felt more involved in decisions that affected them and their children.
- Child welfare workers judged the approach to be more effective³.

By increasing public investment in strategies that support parents and strengthen families—such as child care services; job training, housing, financial literacy and other strategies to address poverty; mental health diagnosis and treatment; and substance abuse treatment—unnecessary child removal for all families can be avoided, and thereby reduce the odds that African-American children will experience disproportionate foster care placement.

The GAO report identified another major factor that exacerbates the disproportionate number of African American children and families involved with state child welfare systems, namely the role of racial bias, distrust and cultural misunderstandings between child welfare decision-makers, mandated reporters and families. The Alliance strongly agrees with the GAO report that, in part, called upon states to take steps to ensure that “decisions to place a child in foster care are not influenced by bias or cultural misconceptions about families or communities...” To help ensure that outcomes for children and families are not determined by their race or ethnicity it is recommended that strategies are developed at *all* decision points along the child welfare continuum, from referral and screening to assessment, investigation to placement, and eventually to permanency. These strategies should include

² Coulton, C., J. Korbin, M. Su, and J. Chow. 1995. Community Level Factors and Child Maltreatment Rates, *Child Development* 66: 1262-1276. A. Sedlak and D. Broadhurst. 1996. *Third National Incidence Study of Child Abuse and Neglect*. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families

³ Loman, L. and G. Siegel. 2004. *Differential Response in Missouri after Five Years Final Report*, St. Louis, Missouri: Institute of Applied Research

addressing poverty, prevention services, involving families in case planning, cultural competency training, outreach to mandated reporters, recruiting, retaining and promoting a culturally competent staff, and the use of culturally competent risk assessments.

2. GAO recommended that the Federal government provide subsidized guardianship payments to support relatives caring for kin as a strategy that would help reduce the disproportionate number of African Americans in foster care. Why is subsidized guardianship so beneficial to African American children?

Permanent legal guardianship with kin is an important path to a permanent, stable home for children that honors cultural, familial, and individual identities. Unlike adoption, guardianship does not involve termination of parental rights; therefore, it is an acceptable option for caregivers who oppose terminating parental rights on cultural, religious or personal grounds. Some kin, who are otherwise able and willing to provide a permanent home, view the disruption of relationships caused by termination of parental rights and the adversarial nature of the termination process as harmful to the child, the family and community as a whole. For example, in American Indian/Alaska Native tribes, where termination of parental rights is contrary to cultural values and practices, subsidized guardianship with kin serves as an acceptable alternative that allows continuation of cultural ties to the tribe as a whole, and extended family members within the child's life.

In addition, kinship care and the value placed on extended family represent important social and cultural assets that are deeply rooted in the African American community. African American children comprise 43 percent of children in the care of relatives⁴ in formal or informal kinship care arrangements⁵. Kinship caregivers are typically grandparents and other relatives with strong emotional ties to the child's birth parents. Although they are willing to offer the child a safe, permanent and loving home, they may feel that terminating parental rights is not in the child's best interests. For some families, the birth parents may have a physical or mental disability that prevents them from caring safely for the child. For others, relatives may feel that the child's parents will address their problems and be able to safely resume custody of the child in the future. In addition, some relative caregivers may consider it inappropriate to change their legal relationship with the child from grandparent, aunt or uncle to become the child's mother or father.

As with American Indian/Alaska Natives subsidized guardianship is beneficial to African American children because it is culturally competent and reinforces the extended family as a traditional approach within the African American

⁴ *African American Children in Foster Care*. 2007. Washington, DC: Government Accounting Office www.gao.gov/cgi-bin/getrpt?GAO-07-816

⁵ Based upon data provided by the states which may not accurately reflect the experiences of American Indian/Alaska Native children.

community for protecting and supporting its children. By providing financial assistance for legal guardians to care for related children, permanent legal custody becomes a viable option for caregivers who are willing and otherwise able to care for a child.

It is also important to note that when compared to children in non-relative placements, children living with kin experience a range of positive outcomes that include:

- Higher scores on physical, cognitive, emotional and skill-based indicators,
- Fewer behavioral problems as rated by their teachers and caregivers,
- Increased placement stability and continuity,
- Safety levels that equal or surpass those of children living with non-relative foster parents
- Greater satisfaction with the people they live with and fewer attempts to run away,
- Higher rate of placement with their siblings,
- Fewer school changes.⁶

Subsidized guardianship has enormous potential for appropriately reducing the number of children of color in foster care. The Illinois Department of Children and Family Services implemented a range of strategies to reduce foster care, and it credits the subsidized guardianship program established under a Title IV-E demonstration waiver in 1997 as one of the cornerstones to its success. In 1997, 51,000 children were in foster care, 78 percent of whom were African-American. Ten years later, there were fewer than 16,000 children in foster care, 60 percent of whom are African-American. More than 10,000 children left foster care to subsidized permanent guardianship.⁷ In fact, due to the success of the now-discontinued IV-E subsidized guardianship waiver program, thirty nine states plus the District of Columbia offer some type of subsidy to legal guardians, but these state-funded programs vary significantly in the type and amount of support. The Alliance believes that subsidized guardianship is a crucial option for caregivers who are willing to provide a permanent, loving home for a child, but are unwilling to disrupt family relationships. At the same time, subsidized guardianship is one of many critical strategies required to reduce racial disproportionality and disparities at all points of a child and family's involvement with the child welfare system -- from prevention to post-permanency supports.

⁶ Conway, T. and Hutson, R.Q. 2007. *Is Kinship Care Good for Kids?* Washington: Center for Law and Social Policy; Hutson, R.Q. December 17, 2007. Presentation for National Governor's Association Webcast, *Supporting Kinship Families: What State Policymakers Can Do*. Washington: NGA.
<http://www.nga.org/portal/site/nga/menuitem.9123e83a1f6786440ddcbeeb501010a0/?vgnextoid=bbe4edc8acf54110VgnVCM1000001a01010aRCRD>

⁷ Testa, M. December 17, 2007. Presentation for National Governor's Association Webcast, *Supporting Kinship Families: What State Policymakers Can Do*. Washington, NGA.
<http://www.nga.org/portal/site/nga/menuitem.9123e83a1f6786440ddcbeeb501010a0/?vgnextoid=bbe4edc8acf54110VgnVCM1000001a01010aRCRD>

Questions from Representative Pete Stark:

1. Do you think that requiring large States, such as California and New York, to end their comprehensive background check systems will have a disproportionately negative impact on black foster children who may be denied safe and stable placements with relatives who may be disqualified under the new restrictions?

The Adam Walsh Act is seen by many child welfare advocates as making kinship placement unnecessarily burdensome, which could lead state and local agencies to by-pass relatives as a first placement option in some cases and bar completely the placement of children with a fit and willing relative, even if the court determines that placement with a particular relative is safe and appropriate. When federal requirements for criminal background checks of foster and adoptive parents were first implemented through the Adoption and Safe Families Act (ASFA) in 1997, Congress had the foresight to provide states with the ability to individualize their own eligibility requirements in this area and develop standards that in no way compromise the principle that a child's safety is paramount. This so-called "opt out" flexibility allows states to craft their own state laws and practices while maintaining the safety and health of children under their supervision. As of 2004, nine states, including New York and California, had exercised this option. They did so because their duly enacted laws for assessing the backgrounds of prospective foster and adoptive parents varied somewhat from federal requirements. In most cases, they allowed a rebuttable presumption, whereby a court or child welfare agency may determine that in a particular case a child's best interests override the mandates of state and federal law.

The Adam Walsh Act eliminated states ability to "opt out." There is no evidence to suggest that children in the states that have "opted out" in order to use an alternative safety and background check procedure are in greater danger or are victims of abuse at rates higher than children in states that have not opted out. In fact, in California the criminal background check requirements are more extensive than in federal law. In New York, instead of mandatory disqualification for certain felony convictions, the State statute provides for presumptive disqualification, which may be overcome in certain individual cases only when enumerated safety concerns are satisfied. New York State law is consistent with four Family Court rulings holding that mandatory disqualification for certain felony convictions violates both the federal and New York State constitutions. We are concerned that, without an ability to opt out and allow rebuttable presumptions, there may be situations where children who have lived for years with foster parents or relatives who now want to adopt them could end up having to be removed from their care because of a criminal matter occurring two or three decades earlier that today has no relevance.

As noted in the 2007 GAO report on African American children in foster care, eight states previously opted out of the federal requirements and state officials reported that the new policy would “limit their ability ... to place African American and other children with relatives and other families. California and New York officials [reported] that their alternative plans allow them the flexibility to make exemptions case-by-case for foster care, adoptive, or guardianship families that are typically relatives, and who have past convictions that would otherwise be automatically prohibited by federal law. Although such exemptions make up a comparatively small proportion of total placements for children, state and county officials in California told [the GAO] that their inability to make these exemptions beginning October 2008—when the prohibition on states’ ability to opt out of federal requirements goes into effect—may have a disproportionate impact on the placement of African American children with relatives or other families who they consider safe and appropriate for children.”⁸ One unintended consequence, the delay of relative placements until the background check results are complete in order to ensure IVE reimbursement, may result in more children placed in foster care rather than with the primary placement choice of a kinship caregiver. As noted by the GAO, the requirements under the Adam Walsh Act may increase racial disproportionality since African American children comprise 43 percent of children in the care of relatives and, according to currently available state data, they are more likely than any other group to live in formal or informal kinship care arrangements.

2. If the Subcommittee moves foster care legislation this year, do you recommend that we include a provision that allows States to continue to opt-out of the federal requirements for background checks if they prove that their systems are comprehensive, safe, and in the best interests of the children in care?

In a recent report on the implications of the Adam Walsh Act for child welfare agencies, it was noted that “states had opted out because they had an effective system that was geared toward optimal child safety and speedy licensing and approval procedures, while granting states the flexibility to make appropriate placement decisions about children in their care.”⁹ Therefore, a provision that allows states to opt out while providing their own verifiable systems of determining safe and appropriate placements would both allow states to establish the safety and best interests of children in care and avoid the disproportionate impact on placement of African American children with relatives that state officials anticipate. Instead of assuming that states opting out of federal requirements do not have effective systems in place, the proposed provision is a fair and balanced alternative that would allow states the

⁸ *African American Children in Foster Care*. 2007.

⁹ Miller, Jennifer and Mary Bissell, *Adam Walsh Child Protection and Safety Act of 2006: Issues for Child Welfare Agencies* (April 2007) ChildFocus™ <http://www.childfocuspartners.com/images/AdamWalsh.final.pdf>

flexibility to use their own approaches while requiring demonstration of those systems' effectiveness.

Thank you for the opportunity to respond to questions by the Subcommittee Members. If you require further information please feel free to contact me at (202) 371-1565.

Sincerely,

A handwritten signature in black ink, reading "Khatib Waheed" with a stylized flourish at the end.

Khatib Waheed, Senior Fellow
(On behalf of the Casey-CSSP Alliance for Racial Equity in Child Welfare)